



## DEPARTMENT OF LABOR

### Office of Labor-Management Standards

29 CFR Parts 405 and 406

RIN 1215-AB79; 1245-AA03

Interpretation of the “Advice” Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Final rule; OMB approval of information collection requirements.

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**SUMMARY:** The Office of Labor-Management Standards of the Department of Labor (“Department”) published a final rule on March 24, 2016. The final rule revises the Form LM-20 Agreement and Activities Report and the Form LM-10 Employer Report, which are filed with the Department pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA). In the final rule, the Department revises its interpretation of the advice exemption in section 203(c) of the LMRDA to better effectuate section 203’s requirement that employers and their labor relations consultants report activities undertaken with an object, directly or indirectly, to persuade employees about how to exercise their rights to union representation and collective bargaining. The revised interpretation provides employees with important information that would enable them to consider the source of the information about union representation directed at them when assessing the merits of the arguments and deciding how to exercise their rights. The Department has also revised the forms and instructions to make them more user-friendly and to require more detailed reporting on employer and consultant agreements. Additionally, with this rule, the Department requires that Forms LM-10 and LM-20 be filed electronically. In accordance with the Paperwork Reduction Act (PRA), the Department of Labor announces that

the Office of Management and Budget has approved the information collection requirements contained in the final rule.

DATES: On March 25, 2016, the Office of Management and Budget (OMB) approved under the Paperwork Reduction Act the Department of Labor's information collection request for requirements in 29 CFR Parts 402-406 and 408-409, including the employer and labor relations consultant reporting requirements in Parts 405 and 406, as published in the Federal Register on March 24, 2016. See 81 FR 15924. The current expiration date for OMB authorization for this information collection is March 31, 2019.

FOR FURTHER INFORMATION CONTACT: Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, at (202) 693-0123 (this is not a toll-free number).

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SUPPLEMENTARY INFORMATION: Congress enacted the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), to provide for the disclosure of information on the financial transactions and administrative practices of labor organizations. The statute also provides, under certain circumstances, for reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. Section 208 of the LMRDA authorizes the Secretary to issue rules and regulations prescribing the form of the required reports. The reporting provisions were devised to implement basic tenets of the LMRDA: to protect the rights of employees to organize and bargain collectively, as well as the guarantee of democratic procedures and safeguards within labor organizations, which are designed to protect the basic rights of union members. Section 205 of the LMRDA provides that the reports are public information.

On March 24, 2016, the Department published a final rule that revised the Form LM-20 Agreement and Activities Report and the Form LM-10 Employer Report. See 81 FR 15924. The final rule was based upon comments received in a Notice of Proposed Rulemaking (“NPRM”) published on June 21, 2011. See 76 FR 37292. In the NPRM, the Department proposed to revise its interpretation of the advice exemption in section 203(c) of the LMRDA to better effectuate section 203’s requirement that employers and their labor relations consultants report activities undertaken with an object, directly or indirectly, to persuade employees about how to exercise their rights to union representation and collective bargaining. Under the prior interpretation, reporting was effectively triggered only when a consultant communicated directly with employees. This interpretation left a broad category of persuader activities unreported, thereby denying employees important information that would enable them to consider the source

of the information about union representation directed at them when assessing the merits of the arguments and deciding how to exercise their rights. The Department proposed to eliminate this reporting gap. The final rule adopts the proposed rule, with modifications, and provides increased transparency to workers without imposing any restraints on the content, timing, or method by which an employer chooses to make known to its employees its position on matters relating to union representation or collective bargaining. The final rule also maintains the LMRDA's section 203(c) advice exemption and the traditional privileges and disclosure requirements associated with the attorney-client relationship. The Department has also revised the forms and instructions to make them more user-friendly and to require more detailed reporting on employer and consultant agreements. Sections of the Department's regulations have also been amended consistent with the instructions. Additionally, with this rule, the Department requires that Forms LM-10 and LM-20 be filed electronically. This rule largely implements the Department's proposal in the NPRM, with modifications of several aspects of the revised instructions as proposed.

The Department's final rule includes information collection requirements subject to the Paperwork Reduction Act. Specifically, the final rule requires information collections for employers on the Form LM-10 Employer Report and labor relations consultants on the Form LM-20 Agreement and Activities Report, pursuant to LMRDA section 203, 29 U.S.C. 433. These forms are included, along with the other LMRDA forms, within OMB Control Number 1245-0003. As discussed in the preamble to the final rule, the Department submitted the information collections contained therein to the Office of Management and Budget (OMB) on February 25, 2016 for approval. See 81 FR 16003. On March 25, 2016, OMB approved the Department's information collection request under Control Number 1245-0003, thus giving

effect to the information collection requirements contained in the final rule published in the Federal Register on March 24, 2016. The current expiration date for OMB authorization for this information collection is March 31, 2019.

Dated: March 30, 2016.

Michael J. Hayes,  
Director, Office of Labor-Management Standards.

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